IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

SECOND APPEAL NO.177 OF 2007

Appaji Dattaram Talekar .. Appellant
v/s.
Suryakant Vasant Parab and others ..
Respondents

Mr. Sudhir Prabhu for the appellant.

CORAM : A.M. KHANWILKAR, J.
DATED : 5TH JULY, 2007

P.C.

Heard counsel for the appellant.

2. No case for interference in exercise of the second appeal is warranted. No substantial question of law arises for consideration.

3. Counsel for the appellant would contend that the sale deeds on which basis the courts below have answered the issue in favour of the plaintiff, those sale deeds have been pressed into service for the first time by way of present suit. That, however, does not mean that the sale deed was not in existence. The fact that the sale deeds have been pressed into service for the first time in the present proceedings cannot take away the efficacy of those documents. Execution of the sale deeds has been proved in evidence whereunder the plaintiff's predecessor purchased the land of about 9.75 Ares out of land of about 39.50 Ares from survey No.177 and land about 3 Ares out of land of about 7.75 Ares from survey No.178. There is contemporaneous evidence to support that position. Having said this, the appellate court was right in answering the issue in favour of the respondents.

4. In any case, those are matters of appreciating evidence on record and will not give rise to any substantial question of law.

5. Counsel for the appellant would then contend that assuming that the sale deeds were to be accepted as it is, in that case, the sale of the property would necessarily be a fragmented land in respect of which transaction cannot be permitted. That issue could have been decided only by the appropriate authority designated under section 36 of the Fragmentation Act. The argument clearly overlooks that the transaction was effected in the year 1949. The provisions of Fragmentation Act have been made applicable to the area in question as is fairly accepted on behalf of the appellant in the year 1984. If that is so, the concluded transaction of sale deed executed in the year 1949 cannot become invalid as such.

No case for interference is made out. Dismissed.

(A.M. KHANWILKAR, J.)